IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

W.P.Nos.33078 and 33079 of 2003

Tvl.Big Bags International (P) Ltd.
No.61, Nadakerappa Industrial Estate
Vishwaneedam Post
Bangalore-91. .. Petitioner in both Writ Petitions

versus

The Registrar
Tamilnadu Taxation Special Tribunal
Rajaji Salai, Chennai-1. .. 1st respondent in both Writ Petitions

The State of Tamilnadu
rep. by Deputy Commercial Tax Officer
Group IV Enforcement (Central)
Central Enforcement Wing
Chennai-6. .. 2nd respondent in W.P.No.33078 of 2003

The State of Tamilnadu
rep. by Deputy Commercial Tax Officer
Group II Enforcement (Central)
Central Enforcement Wing
Chennai-6. .. 2nd respondent in W.P.No.33079 of 2003

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PRAYER: W.P.No.33078 of 2003 is filed under Article 226 of the Constitution of India for the issue of a writ of Certiorarified Mandamus calling for the records in O.P.No.742/2003 dated 6.8.2003 on the file of the first respondent and quash the same as illegal and to direct the second respondent to release the goods to the petitioner detained in GD No.1/2003-04 dated 10.4.2003 (detention order).

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W.P.No.33079 of 2003 is filed under Article 226 of the Constitution of India for the issue of a writ of Certiorarified Mandamus calling for the records in O.P.No.725/2003 dated 6.8.2003 on the file of the first respondent and quash the same as illegal and to direct the second respondent to release the goods to the petitioner detained in GD No.1/2003-04 Group II Enforcement/Central dated 9.4.2003 (detention order).

For petitioner in both W.Ps. : Mr.A.Thiyagarajan

For respondents : Mr.R.Tholgappian
Govt. Advocate (Taxes)

JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN,J.)

The prayer in W.P.No.33078 of 2003 is for the issuance of a writ of Certiorarified Mandamus to call for the records in O.P.No.742/2003 dated 6.8.2003 on the file of the first respondent and quash the same as illegal and to direct the second respondent to release the goods to the petitioner detained in GD No.1/2003-04 dated 10.4.2003 (detention order).

2. The prayer in W.P.No.33079 of 2003 is for the issuance of a writ of Certiorarified Mandamus to calling for the records in O.P.No.725/2003 dated 6.8.2003 on the file of the first respondent and quash the same as illegal and to direct the second respondent to release the goods to the petitioner detained in GD No.1/2003-04 Group II Enforcement/Central dated 9.4.2003 (detention order).

3. The petitioner in these writ petitions is the manufacturer of Jumbo bags by using plastic granules as a raw material and is a recognised Export House. The petitioner is also a registered dealer under the Karnataka Sales Tax Act, 1957 and the Central Sales Tax Act, 1956. The petitioner is in the practice of purchasing its requirement of plastic granules on high sea basis in accordance with the provisions of Section 5 (2) of the Central Sales Tax Act, 1956. In respect of W.P.No.33078 of 2003, on 20.3.2003, the petitioner company entered into a high sea sale agreement with Saraf Fincom (P) Ltd., Archana Complex, No.37/12-1, 4th Cross Lalbagh Road, Bangalore-27, for purchasing 96,000 metric tons (3840 bags) of Polypropylene Granules 5032-E1 Grade, Exxonmobil, valued at 34,83,288/-. On the arrival of the goods, the petitioner filed Bill of Entry Nos.476034 to 476039 dated 28.3.2003 and bonded the goods after assessment in a warehouse under the provisions of the Customs Act, 1962. In respect of W.P.No.33079 of 2003, the petitioner entered into a high sea sale agreement with P.P.Products (P) Ltd., Archana Complex, No.37/12-1, 4th Cross Lalbagh Road, Bangalore-27, for purchasing 17.5 metric tons (700 bags) of Polypropylene Granules M9600 Grade, Exxonmobil, valued at Rs.9.94

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lakhs. On the arrival of the goods, the petitioner filed Bill of Entry No.475547 dated 27.3.2003 and bonded the goods after assessment in a warehouse under the provisions of the Customs Act, 1962.

4. In respect of W.P.No.33078 of 2003, on 10.4.2003, the second respondent passed an order of detention of the said plastic granules under the provisions of the Tamil Nadu General Sales Tax Act, 1959, under the premise that Saraf Fincom (P) Ltd. was the consignor and the petitioner was the consignee. Consequent to the said detention order, the petitioner filed various documents to prove its ownership. However, the respondent issued a notice under Section 46(1)(a) read with Section 41A of the Tamil Nadu General Sales Tax Act, 1959, giving an opportunity to Saraf Fincom (P) Ltd., to compound the offence in a sum of Rs.4,91,874/- being two times of the tax due and to pay the tax sum of Rs.2,45,937/- on the value of the goods, by marking a copy to the petitioner. Similarly, in W.P.No.33079 of 2003, on 9.4.2003, the second respondent therein passed an order of detention of the said plastic granules under the provisions of the Tamil Nadu General Sales Tax Act, 1959, under the premise that P.P.Products (P) Ltd. was the consignor and the petitioner was the consignee. Consequent to the said detention order, the petitioner filed various documents to prove its ownership. However, the respondent issued a notice under Section 46(1)(a) read with Section 41A of the Tamil Nadu General Sales Tax Act, 1959, giving an opportunity to P.P. Products (P) Ltd., to compound the offence in a sum of Rs.92,194/- being two times of the tax due and to pay the tax sum of Rs.49,097/- on the value of the goods, by marking a copy to the petitioner.

5. The petitioner filed its objection supported with supporting materials, but in vain. In those circumstances, the petitioner moved the Tamil Nadu Taxation Special Tribunal by filing O.Ps. and the O.Ps. were dismissed by directing the petitioner to move the authorities by way of revision under Section 33 of the Tamil Nadu General Sales Tax Act, 1959. The correctness of the said orders is canvassed in these writ petitions.

6. At the time of admission, an interim order was passed directing the release of the goods on certain conditions. As such, the goods were released.

7. Learned counsel appearing for the petitioner submitted that the detention orders have been passed purely on surmises, because the fact remains that the goods have been purchased by the petitioner on high seas sale and cleared for warehousing and the goods were warehoused. The goods were not cleared for home consumption; that the goods are under the control of the Customs Authority i.e., prior to clearance by the petitioner, there cannot be any taxability under the Tamil Nadu General Sales Tax Act, 1959, and such goods are yet to be imported and merged with the other goods in the local area.

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8. This Court, in the decision of the Division Bench of this Court reported in 140 STC 239 (TARAJYOT POLYMERS LTD. Vs. D.C.T.O.), to which incidentally one of us is a party, considered the issue with reference to Section 2(ab) and 5(2) of the Central Sales Tax Act, 1956 and under Sections 47 and 68 of the Customs Act, 1962, along with Article 286 of the Constitution of India, with reference to the fact that the goods were imported and the goods have been warehoused and yet to be cleared under Section 68 of the Customs Act, 1962 for home consumption at the time of passing of the detention order, the authorities under the Tamil Nadu General Sales Tax Act have no power to pass an order of detention. However, with reference to the power conferred on the authority under Section 46(1)(a) and Section 41-A of the Tamil Nadu General Sales Tax Act, the Division Bench held that when the goods were still with the Customs Authorities and yet to be cleared for home consumption, there was no possibility for the importer to remove the goods that too clandestinely against the statutory provisions under Section 41-A, and therefore, the invocation of penal provision under Section 46(1)(a) cannot be countenanced. The facts of the present case is also identical to that of the case considered by the Division Bench. Hence, following the Division Bench judgment, we are of the view that the levy is not in accordance with law and hence, the writ petitions are ***allowed***. However, the feasibility of the issue subsequent to the clearance of the goods could be tested by the authority after it is considered in accordance with the statutory provisions. No costs.

Sd/-
Asst. Registrar.
Dated : 07.11.2007

Corrected as per being mentioned
order of this Court dated 07.12.2007
and made herein

Sd/-
Asst. Registrar
Dated : 11.12.2007

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Sub Asst. Registrar.

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To:

1. The Registrar
   Tamilnadu Taxation Special Tribunal
   Rajaji Salai, Chennai-1.

2. The Deputy Commercial Tax Officer
   State of Tamilnadu
   Group IV Enforcement (Central)
   Central Enforcement Wing
   Chennai-6.

   To be substituted to the order already despatched on 14.11.2007

3. The Deputy Commercial Tax Officer
   State of Tamilnadu
   Group II Enforcement (Central)
   Central Enforcement Wing
   Chennai-6.

2 cc to Mr.A. Thiyagarajan, Advocate, Sr.72242, 72243.
1 cc To The Special Government Pleader (Taxes), SR.72512.

W.P.Nos.33078 and 33079 of 2003

JRG (CO)
kk 7/11

RVL 12.12.2007

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